

**A Chew Sew Khian @ Chew Hua Seng v Saniboey Mohd
 Ismail & Ors**

HIGH COURT (JOHOR BAHRU) — CIVIL SUIT NO (MT-1) 22-24 OF 1999
SYED AHMAD HELMY JC
23 JULY 2002

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Tort — Defamation — Libel — Libel in newspaper — Identity of plaintiff — Whether plaintiff was the person referred to in article

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The plaintiff claimed against the defendants for damages for libel in respect of an article published in the Johor edition of the newspaper *Harian Metro*. The article stated that the district Police was pursuing a 'jurujual' known as Chew aged 56 years for cheating a timber merchant. The plaintiff claimed that by the article, the defendants meant and were understood by the readers to mean that the plaintiff was the person referred to in the article and that he was a cheat, untrustworthy, prepared to falsify documents and involved in criminal activities and was wanted by the police in connection with the activities aforesaid. By reason thereof, the plaintiff has been greatly injured in his credit and reputation and had been brought to public scandal, odium and contempt. The defendants proceeded in respect of the defence that the article did not refer to the plaintiff.

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Held, dismissing the plaintiff's claim with costs:

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(1) A fair minded reader 'not avid for scandal' and not 'unduly suspicious' upon reading the article cannot be said to reasonably understand that the article and the words complained of refers to the plaintiff. The word specifically used was 'jurujual' (salesman) and not 'ahli perniagaan' (businessman). Nowhere in the article were the words 'ahli perniagaan' used. The word 'jurujual' means what it says, namely salesman and cannot by any stretch of imagination be extended to a businessman (see p 95B-C).

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(2) The cumulative effect of the evidence as presented would lead to the conclusion that a fair minded reader upon reading the article objectively would understand the article to refer to a salesman involved in the timber business who is being sought by the police, and hence the plaintiff cannot be said to fit in the descriptive category aforesaid (see p 95F).

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[Bahasa Malaysia summary]

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Plaintiff telah menuntut terhadap defendan-defendan untuk ganti rugi libel berhubung dengan suatu artikel yang diterbitkan di dalam suratkhbar *Harian Metro* edisi Johor. Artikel tersebut menyatakan bahawa polis daerah sedang mencari seorang 'jurujual' yang dikenali sebagai Chew, berumur 56 tahun kerana beliau telah menipu seorang saudagar balak. Plaintiff telah menyatakan bahawa melalui artikel

tersebut, defendan-defendan bermaksud dan difahami oleh pembaca-pembaca untuk membawa makna plaintif merupakan orang yang dimaksudkan di dalam artikel tersebut dan bahawa beliau merupakan seorang penipu, tidak boleh dipercayai, sedia memalsukan dokumen dan terlibat dalam kegiatan jenayah dan dikejar oleh polis berkaitan kegiatan-kegiatan yang dikatakan itu. Oleh kerana itu, kebolehpercayaan dan reputasi plaintif telah terjejas dan beliau telah diheret ke dalam skandal awam, rasa benci dan penghinaan. Defendan-defendan memegang kepada pembelaan bahawa artikel tersebut tidak merujuk kepada plaintif.

Diputuskan, menolak tuntutan plaintif dengan kos:

- (1) Seorang pembaca yang berfikiran waras 'not avid for scandal' dan 'unduly suspicious' setelah membaca artikel tidak boleh dikatakan untuk faham secara munasabah bahawa artikel tersebut dan perkataan-perkataan yang diadukan merujuk kepada plaintif. Perkataan-perkataan yang khusus digunakan adalah 'jurujual' dan bukan 'ahli perniagaan'. Perkataan-perkataan 'ahli perniagaan' tidak digunakan di dalam artikel tersebut. Perkataan 'jurujual' bermakna seperti yang dikatakan, iaitu seorang jurujual dan tidak dapat dikatakan membawa makna seorang ahli perniagaan (lihat ms 95B-C).
- (2) Kesan kumulatif keterangan yang dikemukakan akan membawa kepada kesimpulan bahawa seorang pembaca yang berfikiran waras setelah membaca artikel tersebut secara objektif akan memahami artikel tersebut merujuk kepada seorang jurujual yang terlibat di dalam perniagaan balak yang sedang dikejar oleh polis dan oleh itu plaintif tidak boleh dikatakan merupakan orang yang digambarkan (lihat ms 95F).

Notes

For cases on libel, see 12 *Mallal's Digest* (4th Ed, 2000 Reissue), paras 263-352.

Cases referred to

David Syme v Canavan (1918) 25 CLR 234 (refd)

Lee Kuan Yew v Derek Gwyn Davies & Ors [1990] 1 MLJ 390 (refd)

Morgan v Odhams Press Ltd [1971] 1 WLR 1239 (refd)

Sandison v Malayan Times Ltd & Ors [1964] MLJ 332 (refd)

Appeal from:

Gobind Singh Deo (Karpal Singh & Co) for the plaintiff.

Mohd Izral Khairi (Shearn Delamore & Co) for the first, third and fourth defendants.

Syed Ahmad Helmy JC: In this action, the plaintiff claims against the defendants for damages for libel in respect of an article published in the

A Johor edition of the newspaper *Harian Metro* on 3 January 1995 under the caption 'Polis Buru Jurujual'. The article stated that the district police were pursuing a salesman known as Chew aged 56 years for cheating a timber merchant at Wisma Chew Ann Ting, Segamat and absconding with the sum of RM207,000 being the proceeds from the sale of timber lorry.

B The plaintiff claimed that by the article the defendants meant, and were understood by the readers to mean, that the plaintiff was the person referred to in the article and that he was a cheat, untrustworthy, prepared to falsify documents and involved in criminal activities and was wanted by the police in connection with the activities aforesaid. By reason thereof, the plaintiff has been greatly injured in his credit and reputation and had been brought to public scandal, odium and contempt. The defendants admitted the publication and though pleading the defences that the article did not refer to the plaintiff and the alternative defence of qualified privilege, nevertheless proceeded only in respect of the defence that the article did not refer to the plaintiff.

D The issue on whether or not the impugned article refers to the plaintiff is a question of law.

It is trite law that an essential ingredient to found an action for defamation is that 'the words or matter complained of refer to the plaintiff'. Unless it is alleged and proved that the subject matter of the action was published of and concerning the plaintiff, the action is bound to fail — *Carter-Ruck on Libel and Slander* at p 54.

E In *Morgan v Odhams Press Ltd* [1971] 1 WLR 1239, Lord Donovan at p 1263 stated:

It is always for the plaintiff to prove that the defamatory words were published of and concerning him. The onus is firmly upon him, and if he does not discharge it, he has no cause of action.

F The test that the plaintiff has to fulfil in establishing that the offending words complained of are in fact published of him was laid down in *David Syme v Canavan* (1918) 25 CLR 234, where Isaacs J defined the test in this way:

G The test of whether the words that do not specifically name the plaintiff refer to him or not in this: *Are they such as reasonably in the circumstances would lead persons acquainted with the plaintiff to believe that he was the person referred to?* That does not assume that those persons who read the words know all the circumstances or all the relevant facts. But although the plaintiff is not named in words, he may, nevertheless, be described so as to be recognized; and whether the description takes the form of a word-picture of an individual or the form of a reference to a class of persons of which he is or believed to be a member or any other form, if in the circumstances the description is such that a person hearing or reading the alleged libel would reasonably believe that the plaintiff was referred to, that is sufficient reference to him. (Emphasis added.)

H In determining the issue of identity, the test is an objective one. As was stated by Lord Guest in *Morgan* at p 1261:

I In my view, a somewhat more exacting test should be predicated where the question is one of identity. It is not sufficient for the reader to say 'I wonder if

the article refers to Johnny Morgan' nor is pure speculation sufficient. Nor is it sufficient that a reasonable person believes that the words refer to the plaintiff. The test is an objective one. The ordinary reader must be fair minded and not avid for scandal. He must not be unduly suspicious. The ordinary reader must have rational grounds for his belief that the words refer to the plaintiff.

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There are two ways of proving identity, namely:

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- (a) by the calling of witnesses to testify that readers of the impugned article would understand the words appearing therein to refer to the plaintiff; or
- (b) an ordinary reader reading the article would reasonably understand the words as referring to him.

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In the proceedings herein, surprisingly the plaintiff is not relying on any evidence extrinsic to the offending article as no evidence of readers testifying that after reading the article they understood that it referred to the plaintiff was proffered. The plaintiff's case hence is pivoted on the comparatively exacting basis that an ordinary reader reading the article would reasonably understand the words to refer to him.

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The evidence as proffered by the plaintiff himself was to the effect that he was an established businessman in Segamat involved in various business activities relating to rubber, palm oil, transport, printing, petrol station and hotelier. He was 56 years of age and was the chairman and director of the hotel which was situated at Wisma Chew Ann Ting, Batu 1, Jalan Buloh Kasap, Segamat, Johor. He is known as 'Chew' in the business circle and the article relating to the police looking out a salesman 56 years of age for allegedly cheating a timber merchant of proceeds of sale of timber lorry amounting to RM207,000 at Wisma Chew Ann Ting, Segamat.

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He adverted to being the only Chew amongst his other siblings that was involved in the business of extraction and sale of timber and by reason thereof it was strenuously contended by learned counsel for the plaintiff that the plaintiff has shown that the article referred to him and no one else. The article in its usage of the word salesmen (jurujual) and making express references to the name Chew, aged 56 years of age who committed the offence of criminal breach of trust at Wisma Chew Ann Ting must, it is urged, necessarily refer to him. .

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From the evidence adduced by the plaintiff, it is not in dispute that the plaintiff has five siblings, all bearing the family name of 'Chew' and residing in Segamat, Johor. The business relating to rubber, palm oil, transportation, petrol station and hotel involved all the siblings and hence all the Chew siblings are businessmen. It is also patently clear that the caption of the article 'Polis buru jurujual' and the body of the article refers to a salesman named Chew and made specific reference to the nature of the extraction and sale of timber, ie timber related activities.

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By reason of the words used in both the caption and body of the article, can it be said that it would be understood by an ordinary reader — a fair

- A minded reader ‘not avid for scandal’ and not ‘unduly suspicious’ to refer to the plaintiff?

Can this court by applying the exacting test of Lord Guest in *Morgan* formulate that view that such a reader would have ample grounds and rational grounds for concluding that the words referred to the plaintiff?

- B I would think not. A fair minded reader ‘not avid for scandal’ and not ‘unduly suspicious’ upon reading the article cannot be said to reasonably understand that the article and the words complained of refers to the plaintiff. I say this because in both the caption and the body of the article, namely paras 2, 4, 7, 8, 9, 10 and 12, the words specifically used was ‘jurujual’ (salesman) and not ‘ahli perniagaan’ (businessman). Nowhere in the article was the word ‘ahli perniagaan’ used. It should be observed that the word ‘jurujual’ means what it says namely salesman and cannot by any stretch of the imagination be extended to a businessman. Again, the article made specific reference to the project relating to extraction and sale of timber, ie timber activities and no reference whatsoever was made to the business of rubber, palm oil, transportation, printing, petrol station and hotel. Though the plaintiff has led evidence of his involvement in the timber business, nevertheless it was a one-off business venture conducted through a company incorporated for that purpose, the name of which, the date of incorporation and the date of its closure, the plaintiff conveniently could not remember. The nature of the evidence presented in relation to his timber related business is clearly insufficient for the court to accept as establishing that the plaintiff was involved in the timber related business bearing in mind that the onus of proving the same lies with the plaintiff. Again, the usage of the word ‘Chew’ cannot be said to be peculiar of the plaintiff as uncontroverted evidence has been established that all the siblings bear that name and all are businessmen.

- F The cumulative effect of the evidence as presented, would, to my mind, lead to the conclusion that a fair minded reader upon reading the article objectively would understand the article as referring to a salesman involved in the timber business who is being sought by the police and hence the plaintiff cannot be said to fit into any of the descriptive categories aforesaid.

- G My conclusion aforesaid is based on the evidence as presented and clearly distinguishes it from the case of *Sandison v Malayan Times Ltd & Ors* [1964] MLJ 332, where not only was the plaintiff in that case the only expatriate officer and details of his dismissal explicitly stated and succeeded by a local officer, but more importantly four witnesses were called and testified that they had no hesitation in identifying him.

- H Again, unlike the factual matrix herein is the case of *Lee Kuan Yew v Derek Gwyn Davies & Ors* [1990] 1 MLJ 390, where though the plaintiff therein was not named, nevertheless the article made express references to what the plaintiff did and said at a meeting and the reaction of the plaintiff being impatient and forceful in his assertion that a collision between the State and the Church was inevitable, and that he was prepared to use the ISA, and in that context, the court held that an ordinary reader would understand it as referring to the plaintiff.

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In the light of my finding aforesaid, the question of whether or not the articles bears defamatory imputation is not called for determination for the obvious reason that the plaintiff failed to discharge the onus of proving that the offending article was published of and concerning him.

By reason thereof, I accordingly dismiss the plaintiff's claim with costs.

Dismissing the plaintiff's claim with costs.

Reported by Peter Ling

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